

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

POND’S EDGE ASSOCIATES, LLC,)	
)	Supreme Court Civil Action Number
Defendant-Below)	
Appellant,)	270, 2012
)	
v.)	Superior Court Civil Action Number
)	
C&C DRYWALL CONTRACTOR)	11C-05-064-JOH
INC.,)	
)	
Plaintiff-Below)	
Appellee.)	

This 31st day of May, 2012, Defendant Pond’s Edge Associates, LLC (“Pond’s Edge”) having made application under Supreme Court Rule 42 for an order certifying an appeal from an interlocutory order/opinion of this Court dated May 11, 2012, and it further appearing that:

1. Plaintiff C&C Drywall Contractor, Inc., has brought breach of contract, quantum merit, and statutory actions against various defendants, including Pond’s Edge. Plaintiff seeks damages in excess of \$1.5 million from Pond’s Edge and other defendants.
2. Pond’s Edge moved for summary judgment on the following grounds that:
 - a. The dates of invoices for payment which plaintiff sent showed that the Statute of Limitations had expired;
 - b. To avoid the Statute of Limitations, the plaintiff is relying upon a Note which includes Pond’s Edge (among other defendants) and the signature of

a person on behalf of Pond's Edge;

- c. The person who signed the Note "for" Pond's Edge is not a member of or a managing member of its LLC;
- d. There is no evidence to show that this person was acting with apparent authority;
- e. It was unreasonable under the record presented for the plaintiff to believe that the signatory of the Note was acting with apparent authority;
- f. The Note refers to Pond's Edge as an affiliated company of Frank Robino Companies, LLC but Pond's Edge is not such an affiliated company and that there is no common ownership between Pond's Edge and any Robino Company.

3. This Court denied Pond's Edge motion on the basis that a genuine issue of material fact exists on the key issues of apparent authority and reasonable reliance (by plaintiff):

- a. Plaintiff's invoices were addressed to Pond's Edge at Robino's office address.¹
- b. On August 11, 2010, plaintiff's counsel sent a letter to Charles Robino (at the same address as the invoices had been sent) about the debt owed to plaintiff. Enclosed was a Note, and the letter went on to state, "Please have the appropriate and authorized members/managing member of the various

¹ Plaintiff's complaint; Pond's Edge Interlocutory Application, Ex. A.

entities sign the document and return the signed original to me.”²

c. The Note states in pertinent parts:

This Note and Acknowledgement [sic] of Debt entered into this 9th day of Sept., 2010, by **Frank Robino Companies, LLC**, a Delaware limited liability company, and its affiliated companies: **Robino-Cannon Mill II, LLC**, a Delaware limited liability company, **Westover, LLC**, a Delaware limited liability company, **Robino Walls-Fairway, LLC**, a Delaware limited liability company, **Robino-Congressional Village, LLC**, a Delaware limited liability company, **Robino-Wynnefield II, LLC**, a Delaware limited liability company, **Pond’s Edge Associates, LLC**, all collectively referred to herein as “Debtors”.

RECITALS

WHEREAS, Frank Robino Companies, LLC and the above-named affiliated companies have common ownership and are indebted to **C&C Drywall Contractor, Inc.**, a Delaware corporation (hereinafter “Creditor”) for labor and materials in the performance of various drywall projects for the Debtors or all of them and for which the invoices total \$1,643,982.10 and remain unpaid; and

WHEREAS, Debtors have been unable to pay the debt aforesaid due to adverse economic conditions; and

WHEREAS, the parties hereto desire to memorialize and acknowledge the subsisting debt between Debtors and Creditor in writing for the purpose of bringing the debt within the protective provisions of 10 *Del. C.* § 8109, thereby extending the statute of limitations in accordance therewith.

...

IN WITNESS WHEREOF, the parties have hereunto set their hands intending to be legally bound hereby and that the signing of this document has been duly authorized by the directors or members of each respective Debtor signing below as an

² Pond’s Edge Application, Ex. E.

authorized act.³

- d. One person signed the Note for all entities including Pond's Edge, and he was a person with whom plaintiff had been dealing over the course of the Pond's Edge contract.
 - e. The person who signed the Note for all of the entities listed in the Note, including Pond's Edge, supplied an affidavit as part of Pond's Edge's summary judgment motion. In pertinent part he states, "The execution draft [of the Note] was placed in front of me for signing by the then in-house counsel for Frank Robino companies; I did not proof the execution draft and blindly signed each line thereof."⁴
 - f. While Pond's Edge submitted other documents to argue either (1) possible lack of apparent authority or (2) lack of reasonable reliance by plaintiff, this Court deemed them to be part of a factual dispute for a jury to determine and that it was irresolvable on summary judgment. Many of the same documents have been submitted as part of Pond's Edge's current application.
4. Plaintiff opposes Pond's Edge's application for certification of interlocutory appeal.
5. The issue of apparent authority is distinctly a factual issue,⁵ as is the issue of a

³ Pond's Edge Application, Ex. F.

⁴ Pond's Edge Motion for Summary Judgment, Affidavit of Michael Stortino, Ex. C.

⁵ *Billops v. Magness Const. Co.*, 391 A.2d 196, 199 (Del. 1978).

party's reasonable reliance.⁶ This Court used long-established, settled Delaware law that genuine issues of material fact cannot be decided on a motion for summary judgment. Further that apparent authority and reasonable reliance are factual issues to be settled by a jury is long settled Delaware law. In part, these principles compel the Court to say it is troubled by Pond's Edge's application.

6. The Court did not decide a novel issue of Delaware law and the Court's decision does not create conflicting opinions within this Court.

7. An interlocutory appeal would further delay the ultimate resolution of this case. Because of the application, no trial can be set. It is at best superficial to argue that the appeal would resolve or terminate this litigation despite the existence of the key factual issues.

8. This Court, therefore, refuses to certify this matter for an interlocutory appeal.

IT IS SO ORDERED.

J.

⁶ See *Guyer v. Haveg Corp.*, 205 A.2d 176, 180 (Del. Super. 1964).